

Message Text

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APPROVED BY EA/K:DODONOHUE

BF/OAG - MR. DEITCHMAN

L/T - MR. ROVINE (SUBS)

AID/GC - MR. GLADSON (DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL IMMEDIATE

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E.O. 11652: N/A

TAGS: PFOR, KS

SUBJECT: GAO "CASE ACT" STUDY

REF: (A) SEOUL 3192; (B) SEOUL 3195

1. CASE ACT (1 USC 112B) REQUIRES SECRETARY TO TRANSMIT TO CONGRESS "TEXT OF ANY INTERNATIONAL AGREEMENT, OTHER THAN A TREATY, TO WHICH UNITED STATES IS A PARTY." CLASSIFIED EXECUTIVE AGREEMENTS MUST ALSO BE TRANSMITTED, BUT ONLY TO SENATE AND HOUSE FOREIGN RELATIONS COMMITTEES "UNDER AN APPROPRIATE INJUNCTION OF SECRECY TO BE REMOVED ONLY UPON DUE NOTICE FROM THE PRESIDENT." THIS ACT PERTAINS SOLELY TO INTERNATIONAL AGREEMENTS CONCLUDED AFTER AUGUST 22, 1972, THE EFFECTIVE DATE OF THE ACT.

2. NOTWITHSTANDING THIS BROAD STATUTORY LANGUAGE, THE LEGISLATIVE HISTORY OF THE CASE ACT MAKES CLEAR THAT THE CONGRESS WANTED REVIEW OF "SIGNIFICANT" AGREEMENTS, THAT THEY DID NOT WANT TO BE BURIED UNDER A MOUNTAIN OF TRIVIA. ON SEPTEMBER 6, 1973, ACTING SECRETARY KENNETH RUSH
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ADDRESSED A LETTER TO 43 USG AGENCIES WHICH INCLUDED

COMMENTS REGARDING THE IDENTIFICATION OF AGREEMENTS SUBJECT TO CASE ACT. HE SAID QUOTE. . . I WOULD ALSO NOTE THAT NEITHER THE FORM IN WHICH AN AGREEMENT IS EXPRESSED NOR THE FACT THAT AN AGREEMENT IS OF A SUBORDINATE OR IMPLEMENTING CHARACTER IN ITSELF REMOVES THE AGREEMENT FROM

THE REQUIREMENTS OF THE CASE ACT OR OF THE LAW REGARDING THE PUBLICATION OF INTERNATIONAL AGREEMENTS (1 USC 112A). THE DETERMINATION WHETHER AN INSTRUMENT OR A SERIES OF INSTRUMENTS CONSTITUTES AN INTERNATIONAL AGREEMENT THAT IS REQUIRED TO BE TRANSMITTED TO THE CONGRESS AND TO BE PUBLISHED IS BASED UPON THE SUBSTANCE OF THAT AGREEMENT, NOT UPON ITS FORM OR ITS CHARACTER AS A PRINCIPAL AGREEMENT OR AS A SUBORDINATE OR IMPLEMENTING AGREEMENT.

AS THE SUBJECT MATTER OF OUR INTERNATIONAL AGREEMENTS IS, IN GENERAL, AS BROAD AS THE SCOPE OF OUR FOREIGN RELATIONS, IT IS NOT PRACTICABLE TO ENUMERATE EVERY TYPE OF AGREEMENT WHICH THE DEPARTMENT OF STATE SHOULD RECEIVE FROM THE OTHER EXECUTIVE DEPARTMENTS AND AGENCIES. HOWEVER, IT SEEMS CLEAR THAT TEXTS SHOULD BE TRANSMITTED TO THE DEPARTMENT OF STATE OF THE AGREEMENTS REFERRED TO IN THE RECOMMENDATIONS OF THE COMPTROLLER GENERAL AND OF ANY AGREEMENTS OF POLITICAL SIGNIFICANCE, ANY THAT INVOLVE A SUBSTANTIAL GRANT OF FUNDS, ANY INVOLVING LOANS BY THE UNITED STATES OR CREDITS PAYABLE TO THE UNITED STATES, ANY THAT CONSTITUTE A COMMITMENT OF FUNDS THAT EXTENDS BEYOND A FISCAL YEAR OR WOULD BE A BASIS FOR REQUESTING NEW APPROPRIATIONS, AND ANY THAT INVOLVE CONTINUING OR SUBSTANTIAL COOPERATION IN THE CONDUCT OF A PARTICULAR PROGRAM OR ACTIVITY, SUCH AS SCIENTIFIC, TECHNICAL, OR OTHER COOPERATION, INCLUDING THE EXCHANGE OR RECEIPT OF INFORMATION AND ITS TREATMENT. IN GENERAL, THE INSTRUMENTS TRANSMITTED TO THE CONGRESS PURSUANT TO THE CASE ACT, AND THOSE PUBLISHED (OTHER THAN THOSE CLASSIFIED UNDER EO 11652), SHOULD REFLECT THE FULL EXTENT OF OBLIGATIONS UNDERTAKEN BY THE UNITED STATES AND OF RIGHTS TO WHICH IT IS ENTITLED PURSUANT TO INSTRUMENTS EXECUTED ON ITS BEHALF. UNQUOTE.

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3. ASSUMING GAO SIMPLY STUDYING CASE ACT COMPLIANCE YOU MAY, OF COURSE, SHOW ANY UNCLASSIFIED GOVERNMENT-TO-GOVERNMENT AGREEMENTS CONCLUDED POST AUGUST 1972 TO GAO. YOU MAY ALSO SHOW CLASSIFIED GOVERNMENT-TO-GOVERNMENT AGREEMENTS TO GAO OFFICIALS WITH PROPER CLEARANCE, SUBJECT TO CONCURRENCE OF ORIGINATING DEPARTMENT OR AGENCY (IF OTHER THAN STATE DEPARTMENT). IF GAO SEEKS AGENCY-TO-AGENCY AGREEMENTS, DEPARTMENT HAS NO OBJECTION, BUT

CLEARANCES OF US AGENCIES CONCERNED SHOULD BE OBTAINED
FOR ANY CLASSIFIED AGREEMENTS. AID CONCURS IN ALLOWING
GAO TO SEE ANY AID AGREEMENTS WITH ROK.

4. LIST OF AGREEMENTS REQUESTED REF B IS UNDER PREPARA-
TION AND WILL BE FORWARDED SEPTEL. KISSINGER

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